"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी. 2-22-छत्तीसगढ़ गजट/38 सि. से. भिलाई, दिनांक 30-5-2001."

पंजीयन क्रमांक
"छत्तीसगढ़/दुर्ग/09/2012-2015."

छत्तीसगढ़ राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 109] रायपुर, बुधवार, दिनांक 20 मार्च 2013—फाल्गुन 29, शक 1934

कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़
इन्द्रावती खण्ड, पुराना मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 22 मार्च 2013

क्रमांक 61/निर्वा. याचिका/03/2009-13/2203.—भारत निर्वाचन आयोग, नई-दिल्ली द्वारा जारी अधिसूचना संख्या-82/छ.ग.-वि.स./(1/2009)/2013, दिनांक 28 फरवरी, 2013 लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी संख्या-1/2009 में दिये गये उच्च न्यायालय छत्तीसगढ़, बिलासपुर के तारीख 18 जनवरी, 2013 के आदेश को सर्व साधारण की जानकारी हेतु प्रकाशित की जाती है.

सुनील कुमार कुजूर,
मुख्य निर्वाचन पदाधिकारी.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली 110001

अधिसूचना

नई दिल्ली, तारीख 28 फरवरी, 2013—9 फाल्गुन, 1934 (शक)

सं. 82/छ.ग.-वि.स./(1/2009)/2013.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी संख्या-1/2009 में दिये गये उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के तारीख 18 जनवरी, 2013 के आदेश को प्रकाशित करता है.

आदेश से,

हस्ता./-
(तपस कुमार)
प्रधान सचिव,
भारत निर्वाचन आयोग.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Election Petition No. 01 of 2009

PETITIONER : Brijmohan Singh S/o Late Shri Gopal Singh, Aged about 47 years, R/o In front of Dasharhra Maidan, Shanti Nagar, Supela, Bhilai, District Durg (C.G.)

Versus

RESPONDENT : Saroj Pandey, Aged about 42 years, D/o Shyamji Pandey, Permanent R/o Maitri Nagar, Rishali, District Durg (C.G.) Presently R/o Jalparisar, Nagar Palika Nigam, Durg, District Durg (C.G.)

Election Petition under Section 80/80A read with Section 100 & 101 of the Representation of thc Peoples Act, 1951)

(SB : Hon'ble Mr. N. K. Agarwal, J.)

Present : Mr. Arjun Yadav with Shri Arvind Dubey, counsel for the Petitioner

Shri B. P. Gupta with Shri A. S. Kachhawaha, counsel for the Respondent

ORDER
(Delivered on 18-01-2013)

1. The petitioner, a defeted candidate, has filed the election petition under Section 80/80A read with Section 100 and 101 of the Representation of People Act, 1951 (for short 'R. P. Act') against the election of the respondent as Member of Legislative Assembly in the general elections to the State Legislative Assembly of the Chhattisgarh held in the month of November, 2008.

2. Facts in brief, necessary for disposal of this petition, are as under:

   i. The general elections to the State Legislative Assembly of the Chhattisgarh was held on 14th and 20th November, 2008 and the result were declared on 8th December, 2008.

   ii. The petitioner and the respondents had contested the election to the Vaishali Nagar Constituency No. 66, District Durg, as a candidate of the Indian National Congress and Bhartiya Janata Party respectively. Out of a total of about 1, 20, 922 votes cast in the election, while the respondent secured 63,078 votes, the petitioner could manage 41,811 votes. Resultantly, the respondent was declared elected by a margin of 21, 267 votes.

   iii Not being satisfied with the election result, the petitioner preferred the election petition challenging the election of respondent only on the ground of corrupt practice, as defined under Section 123(1) of the R. P. Act.

   iv. The allegations of corrupt practice have been set forth in paras-3 to 7 of the petition. In para-3, it has been stated that the respondent, her supporters and agents, during her election campaign on 11-11-2008 at about 6.30 p.m. in Bombay-Atal Awas and Jawahar Nagar area of constituency went in an Innova Car bearing registration C.G. 04 H-3517, registered with the election commission in the name of the respondent. She was carrying Sarees and other articles for the purpose of distributing it among the voters for gaining their votes. In para-4, it has been averred that the respondent with her sister and supporters, at that juncture, made an announcement regarding distribution of Sarees and cash to the residents of the colony and thereafter started distributing and in liew thereof requested for their votes in favour of the respondent. In para-5, it has been pleaded, the other candidates and supporters of the petitioner reached their and protested against the conduct of the respondent. The persons who reached there, have also been named as Shri Vashist Narayan Mishra and one independent candidate namely Shri L. M. Baba. Subsequent report to the police, preparation of video C D, report to the election Commission, lodging a criminal complaint under Section 200 of the Code of Criminal Procedure against respondent have also been pleaded in para-5. In para-6, it has been pleaded, the Innova Car used for the corrupt practice was seized at the time of incident and the incident was widely published in the newspaper on the next day.

   v. The election petition was contested by the respondent denying all the allegations. It was pleaded that election petition was not maintainable, inasmuch as, it was not in the prescribed format; for non-disclosure of cause of action; for the absence of proper verification of the pleadings regarding full particulars of the corrupt practice, as required under Section 83 of the R. P. Act.

3. Upon consideration of the pleadings, this Court framed the following issues:

   "1. Whether the election petition deserves to be dismissed :—

      "A. for non-disclosure of cause of action.

      B. for want of affidavit in support of the petition.

      C. for the absence of proper verification of the pleadings.

      D. for the absence of proper pleading regarding full particulars of corrupt practice as required under Section 83 of the Representation of People Act.

   2. Whether the respondent or any other person with her consent committed corrupt practice in the interest of returned candidate i.e. the respondent which has materially affected the election of the respondent.

   3. Reliefs and costs.

4. This Court, vide order dated 07-12-2009 decided issue No. 1 (1-A, 1-B, 1-C and 1-D) in favour of the petitioner holding the petition is not liable to be dismissed in limine under Section 86 of the Act for alleged non-compliance of the provisions of Section 83(1) or (2) of the Act or its proviso.

5. In support of the case, the petitioner placed on record the Video C D, Police Complaint, Compliant case lodged before the J.M.F.C. and Complaint to Chief Election Commissioner, District Election Officer etc. and also examined as many as 10 withnesses including himself. On the other hand, the respondent examined as many as 6 withnesses including herself.

6. The respondent— Ms. Saroj Pandey, duly elected Member of Legislative Assembly constituency No. 66, i.e. Vaishali Nagar, has tendered her resignation and the same was accepted vide Gazette Notification dated 30-05-2009, and since the above constitutency has already been vacated by the respondent, therefore, the only question remains for consideration of this Court is whether the respondent can be disqualified from contesting the elections for the next 6 years ?

7. Shri Arjun Yadav, learned counsel appearing for the petitioner would submit: in order to win the election , the respondent adopted the procedure of distributing sarees and cash on 11-11-2008 at Bombay Atal Niwas, Jawahar Nagar with the help of her supporters and agents and that was seized by the police with the vehicle, i.e. Innova Car bearing registration No. C. G. 04/H/3517 on the said date. The seizure memo itself speaks and enlightens the true incident. It was further contended, admittedly, the respondent was present on the spot on the date of incident. The petitioner has proved the seizure memo. The above piece of evidence stands unrebutted and the acts of corrupt practices, i.e., distribution of sarees and cash have been proved by the petitioner by examining several witnesses. The election of the returned candidate is liable to be declared void and in addition, she should be declared disqualified for contesting the elections for the next 6 years.

8. On the other hand, Shri B. P. Gupta and Shri A. S. Kachhawaha, learned counsel appearing for the respondent would submit: the petitioner utterly failed to prove his case. The charge of corrupt practice is substantially akin to a criminal charge. The charge of corrupt practice is neither specifically pleaded nor proved nor the petitioner has examined any independent witnesses and the petition deserves to be dismissed with costs.

9. I have heard learned counsel for the parties and perused the record.

10. In order to prove the charge of corrupt practice, the petitioner has filed one Video C D (Ex. P. 1).

11 There is no doubt that the new techniques and devices are the order of the day. Audio and videotape technology has emerged as a powerful medium through which a first-hand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transcription, excision, etc. which may be difficult to detect and therefore, such evidence has to be received with caution. Though it would neither be feasible nor advisable to lay down any exhaustive set of rules by which the admissibility of such evidence may be judged but it needs to be emphasized that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence. [please see Tukaram Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329].

12. It is well settled that Tape/Video recordings are documents, as defined in Section 3 of the Evidence Act and stand on no different footing than photographs. The Supreme Court in the case of Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra and others, (1976) 2 SCC 17 has held in para-19 as under:

"19. We think that the High Court was quite right in holding that the tape-records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:

(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act."

13. In the case of Yusufalli Esmail Nagree v. State of Maharashtra, AIR 1964 SC 147, the Supreme Court observed that since the tape-records are prone to tampering, the time, place and accuracy of the recording must be proved by a competent witness. It is necessary that such evidence must be received with caution. The court must be satisfied, beyond reasonable doubt that the record has not been tampered with.

14. The document, contents whereof were not proved nor the maker thereof was examined, is inadmissible in evidence [please see Ram Singh and others v. Col. Ram Singh, 1985 (Supp) SCC 611].

15. Reverting to the facts of the case, the time, place and accuracy of the recording has not been proved by the pertitioner by examining a competent witness, i.e. Priyadarshini, alleged maker of Video C D. The entire petition has been filed by the petitioner based on information received by him from his supporter Vashishtha Narayana Mishra, who has also not stated anything in his statement regarding preparation of the Video C D. The petitioner himself has admitted that he is not aware how and in what manner the C D was prepared. The Video C D (Ex. P.1), therefore, is not admissible in evidence and is of no help to the petitioner in proving the charge of corrupt practice against the respondent.

16. In order to prove the charge of corrupt practice (bribery), the petitioner has further filed one seizure memo (Ex. P. 5) and examined as many as 10 witnesses including himself.

17. As per the averments in the petition, at about 6.30 pm on 11-11-2008, the respondent—Ms. Saroj Pandey sitting with her sister—Manju Pandey and supporters in Innova Car bearing registration No. CG. 04 H-3517 and carrying about 19 bundles of sarees and other articles, had announced that she would be distributing sarees and cash to the residents of colony and they started distributing and in lieu there of requested for their votes in her favour. The news was spread in the vicinity. The other candidates and petitioner's supporters, on hearing the same, rushed towards the place. However, in his statement, the petitioner-Brij Moham Singh (P.W.1) has deposed "personally I have not seen Saroj Pandey distributing articles. My source of information is public. I am not in a position to disclose the name of a particular person, who informed me about the incident. My source of information regarding seizure of 19 bundles of sarees was Vashishtha Narayan Mishra".

18. The above statement of the petitioner reveals that the entire petition is based on seizure memo (Ex. P.5), which was allegedly prepared in the presence of Vashishtha Narayana Mishra, who informed the petitioner.

19. It is pertinent to mention here that Vashishtha Narayana Mishra did not witness the seizure memo and the persons allegedly did witness the seizure memo have not been examined. Vashishtha Narayana Mishra, in his statement, has also not stated that he informed the petitioner—Brij Mohan Singh about the seizure of sarees.

20. The petitioner further did not examine the police personnel, who allegedly prepared the Panchnama and seizure memo. Thus, the fact of seizure of vehicle-Innova Car and 19 bundles of sarees have not been duly proved by the petitioner. Further, the above fact of seizure alone is not sufficient to charge the respondent with corrupt practice.

21. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerable long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal trial so in an election petition, the respondent against whom the charge of corruption practice is levelled, is presumed to be innocent unless proved guility. A grave and heavy onus, therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt.

22. In the case of Jeet Mohinder Singh v. Harminder Singh Jassi, (1999) 9 SCC 386, a three Judge Bench of the Supreme Court summarized the principles laid down by the Supreme Court from time to time in the field of election and held in para-40 as under :

"40. Before we may proceed to deal, in exercise of our appellate jurisdiction, with the pleas raised on behalf of the appellant-petitioner canvassing commission of corrupt prectices by the respondent which in the opinion of the High Court the election petitioner has failed in proving, we would like to state a few well-settled legal principles in the field of election jurisprudence and relevant to our purpose. They are :

(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only

for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. (See Jagan Nath v. Jaswant Singh[7], Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe[8].)

(ii) Charge of corrupt practice is quasi-criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial. (See Quamarul Islam v. S. K. Kanta[9], F. A. Sapa v. Singora[10], Manohar Joshi v. Damodar Tatyaba[11] and Ram Singh v. Col. Ram Singh[12].)

(iii) ....

(iv) Section 83 of the Act requires every election petition to contain a concise statement of the material facts on which the appellant relies. If the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in CPC. An election petition alleging corrupt practice is required to be accompanied by an affidavit in Form 25 read with Rule 94-A of the Conduct of Elections Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two headings :

(i) which of such statements including particulars are true to the appellant's own knowledge, and

(ii) which of the statements including the particulars are true to information of the appellant. It has been held in Gajanan Krishnaji Bapat case[8] that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to the charge levelled by him and to prevent any fishing or roving enquiry, also to prevent the returned candidate from being taken by surprise."

23. In the case of Jagdev Singh Sidhanti v. Pratap Singh Daulta, (1964) 6 SCR 750, the Supreme Court has held as under ;

"11. It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches i.e. the commission of acts which the law regards as corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability, but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail. The evidence may be examined bearing this approach to the evidence in mind."

24. The Supreme Court, in the case of Ramji Prasad Singh v. Ram Bilas Jha (1977) 1 SCC 260, has held in para 23 as under:

"23. That leaves the second of the two contentions to be considered, namely, that Respondent 1's election is vitiated because he attempted to bribe the voters Sri Narain Prasad and Ram Swarath Raut. Having considered the evidence of these two witnesses who are respectively PWs 11 and 71 and the evidence of the appellant himself, it seems to us impossible to accept the allegation of bribery. The two witnesses, PWs 11 and 71, are members of a local authority and it is unlikely that an attempt would

be made to bribe them. In the absence of any evidence of unimpeachable nature and particularly in the absence of any contemporaneous complaint in regard to the allegation of bribery, it would be unsafe to accept the bare word of the appellant and his witnesses on such a serious charge. The charge of bribery is quasi-criminal in nature and in a series of cases this Court has held that such a charge must be proved not by a mere preponderance of probabilities but beyond a reasonable doubt. That proof is lacking here. Besides, the High Court has considered the evidence on the question of bribery fully and carefully and we do not see any reason for departing from our established practice that, except for substantial reasons, this Court will not embark upon a detailed assessment of oral evidence."

25. The Supreme Court in the case of Ramanbhai Nagjibhai Patel v. Jashvant Singh Udesingh, (1978) 3 SCC 142, has held: the charge of bribery is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required is that of proving a criminal or a quasi-criminal charge. A clear cut evidence, wholly credible and reliable, is required to prove the charge beyond doubt. Evidence merely probabilising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a charge.

26. In the case of Surinder Singh v. Hardial Singh, (1985) 1 SCC 91, the Supreme Court has held that election disputes are not cases at common law or equity but are strict statutory proceedings and result of an election is not available to be interfered with lightly. Any petition seeking such intereference must strictly conform to the requirements of the law. . . . . . .

27. In the case of Komireddy Ramuloo v. Chennemaneni Vidyasagar Rao, (1990) 3 SCC 612, the Supreme Court has held that "Unless it is shown that respondent 1 himself personally took part in the printing or distribution of the booklets or the same was done by his election agent or by his agents, or by anybody else with this consent, responsibility for the same cannot be placed on his head."

28. In the case of Quamarul Islam v. S. K. Kanta, 1994 Supp (3) SCC 5. the Supreme Court has held that the evidence that is required to prove the allegations of corruption practices in an election petition has to be more strictly scrutinized, lest the evidence, which in a way travels beyond the pleadings, is accepted without proper analysis.

29. Reverting to the facts of the case, Vashishtha Narayan Mishra, who is a worker and supporter of the petitioner has deposed that on 11-11-2008 at about 7.00 pm. on a telephonic message received from one Smt. Kamla, wife of Chandra Shekhar Kushwaha, resident of Basant Vihar, Vaishali Nagar, about the election meeting of B.J.P. at Bombay Atal Awas, Vaishali Nagar an about offering her a saree by one woman sitting in the Innova Car No. C.G. 04-H-3517 along with Saroj Pandey, he rushed the spot and stood in front of the said Innova Car and saw one woman and a driver were sitting in the vehicle, in which, sarees and canvassing material were kept. On being asked by the S.H.O. Jamul, the driver replied that she is Manju Pandey, sister of returned candidate of B.J.P. The S.H.O. prepared Panchnama in his presence at Bombay Atal Awas, Jawahar Nagar and seized the vehicle (Innova Car) and took it with him to the Jamul police station. However in his cross-examination, he has stated that he reached the spot at about 6.30 to 7.00 pm and when he reached, one vehicle (Innova Car) was standing surrounded by the crowed and he has not seen any person distributing sarees. For the reasons best known to the petitioner, Smt. Kamla, i.e. source of information of Vashishtha Narayana Mishra has not been examined in the case.

30. Badrinath Baghel (P.W. 4), examined by the petitioner, has deposed that about 7.00 pm. 2-3 vehicles came to ward No. 12. Sanjay Sahu, counseller of that ward, was present there and Saroj Pandey and one woman were sitting in the vehicle loaded with bundles of sarees, banners and posters. Saroj Pandey and Sanjay Sahu were distributing the sarees to the voters. When the sarees were being distributed, the police of Jamul Police station came and have seized the Innova Car with sarees and pamphlets. This statement of P.W.4 is counter to the statement of Vashishtha Narayana Mishra, inasmuch as, Vashishtha Narayana Mishra (P.W.), who reached the spot, as per his examination-in-chief, at 7.00 pm., has not seen any person distributing sarees at that time.

31. As per the statement of Durga Prasad Tamrakar (P.W. 7) he reached the spot at about 7.00-7. pm and has seen Saroj Pandey and one woman distributing the sarees brought with them in Innova Car No. C.G. 04/H/3517 and when he asked the people, he came to know that Saroj Pandey and her sister were distributing the case and sarees. They also offered him cash and saree but he refused, as according to him, this is corrupt practice. Meanwhile, Jamul Police came and congress workers and L.M. Babu's followers also came there. The police managed to rescue Saroj Pandey and after seizing the Innova Car loaded with bundles of sarees and pamphlets, took away with them to the police station.

32. The statement of Durga Prasad Tamrakar runs counter to the statement of Vashishtha Narayana Mishra (P.W. 3), who in his cross-examination has deposed, "at about 6.30-7.00 pm when he reached the spot, the vehicle was surrounded by the mob". In the similar fashion, the other witnesses examined by the petitioner, namely, Dheerendra Pandey (P.W. 8), Brijesh Rai (P. W. 9) and Pramod Kumar Torle (P.W. 10) are also not reliable and trustworthy.

33. The Supreme Court, in the case of Surinder Singh v. Hardial Singh (Supra) has held that merely on statements of some of the witnesses who are essentially party workers or supporters a charge of corrupt practice cannot be taken as proved. Oral evidence, particularly, coming from tainted source, cannot form the sole basis of proof of corrupt practice.

34. If this Court examines the case in hand in the light of pleadings of the parties, evidence, oral as well as documentary available on record and in the light of above settled legal principles enunciated by the Apex Court in the cases referred hereinabove, it would be clear that the petitioner utterly failed to prove the charge of corrupt practice levelled by him against the respondent under Section 123 (1) of the R. P. Act. The evidence has been adduced by the petitioner without laying any foundation in the pleadings. The evidence adduced is also not sufficient cogent, clinching or trustworthy so as to hold the respondent guilty of corrupt practice.

35. For the reasons mentioned herein above, the petition fails and is dismissed.

Sd/-

N. K. AGARWAL,
Judge.

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव से मुद्रित तथा प्रकाशित—2013.